



Secretariat of Pro-Life Activities

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WHAT DOES THE NELSON/HATCH/CASEY AMENDMENT REALLY DO?

On November 7, 2009, during consideration of the Affordable Health Care for America Act (H.R. 3962), Rep. Bart Stupak (D-MI) and other pro-life members offered an amendment to prevent the health care reform bill from subsidizing coverage of elective abortions. Other sponsors included Rep. Joseph Pitts (R-PA), Brad Ellsworth (D-IN), Marcy Kaptur (D-OH), Kathy Dahlkemper (D-PA), Chris Smith (R-NJ) and Dan Lipinski (D-IL). The amendment was approved 240 to 194, with the support of 64 Democrats, and the bill was then approved 220 to 215. Senators Ben Nelson (D-NE), Orrin Hatch (R-UT) and Robert Casey (D-PA) will now offer a similar amendment to the Senate health care reform bill, the “Patient Protection and Affordable Care Act” (substitute for H.R. 3590).

A number of false claims have been made about the amendment. Below is a summary of what it does, and answers to frequently asked questions:

What does the Nelson/Hatch/Casey amendment do?

1. It applies the longstanding policy of the Hyde amendment to this program: No funds authorized or appropriated under this Act (including the tax credits used to help individuals purchase health coverage) may be used for abortions, or for benefits packages that include abortion.

2. This does not apply to abortions in cases of danger to the mother’s life or rape/incest.

3. The amendment clearly states that it does not prevent the following:

(a) Any individual (including someone whose overall health plan was purchased with the help of federal tax credits) may use his or her own private funds to purchase a supplemental policy covering abortions; any private insurer may sell such a policy.

(b) Any individual whose private coverage is *not* federally subsidized may purchase (or continue to be covered by) a plan that includes elective abortions, paid for with that individual’s premium dollars. This includes individuals who receive health insurance through their employers, as well as those who may want to purchase it individually on the new Exchange where health plans will compete to sell insurance to those who lack employer-based coverage.

(c) A private insurer participating in the Exchange may even sell a health plan that includes elective abortions to non-subsidized individuals on the Exchange, but then must also offer the same plan *without* elective abortions (selling only the latter version to federally subsidized purchasers).

4. All contrary provisions in the bill (allowing the HHS Secretary to include elective abortions in the government-run “community health insurance option,” allowing federal subsidies to support plans that include such abortions, etc.) are made consistent with this policy.

5. A provision forbidding health plans to “discriminate” against health facilities that are willing to perform and provide abortions is deleted. If the public plan, and private plans receiving federal subsidies, will not provide abortions, there is no reason for the government to make them include abortion facilities in their network.

Questions about the amendment

1. Is the Nelson/Hatch/Casey amendment broader than the Hyde amendment that has prevented federal funding for abortion for decades?

Opponents have said it is. They claim that the Hyde amendment only prevents federal funds from being used for an abortion procedure itself, not for entire benefits packages that include abortion. But this is simply not true. For many years the annual Hyde amendment has said that no funds appropriated in the Labor/HHS appropriations bill may support “health benefits coverage that includes coverage of abortion.” The many other provisions that have extended the Hyde policy to other federal programs over the years say the same thing. For example, the Federal Employees Health Benefits Program, providing health care to 8 million federal employees, states that no federal funds may be available for “the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.” And the Children’s Health Insurance Program, reauthorized with President Obama’s signature this year, has long prohibited the use of federal funds “to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.”

Every current federal health program already bars use of federal funds to subsidize health plans that include elective abortions. The Nelson/Hatch/Casey amendment follows this same policy.

2. Does the Nelson/Hatch/Casey amendment forbid abortion coverage in health plans that use only private funds?

No. In fact, it explicitly says that people not using federal subsidies to purchase a health plan may purchase a plan with elective abortion coverage. Even people who use federal subsidies to buy their overall health coverage may use their own private funds to purchase a supplemental policy covering abortion if they wish to do so.

Some have objected to the fact that the health plan run directly by the federal government nationwide, the “community health insurance option,” will not include elective abortions even if a particular purchaser is not receiving affordability credits to help pay his or her premiums. They don’t understand that the public option is simply a federal program, directly managed by the Secretary of HHS and closely modeled on the Medicare program for seniors. The bill authorizes disbursement of general tax revenues for “start-up” costs and initial reimbursements for all medical procedures (sec. 1323 (c); the Secretary has the same authority over contractors who help manage the program as she does in Medicare (sec. 1323 (e)); and so on.

So premiums paid into this plan begin as private dollars, but our tax dollars begin that way too. They are paid to the government, and the government then pays to set up and administer a health plan providing medical procedures (including abortions, if the plan were to include those). So this is a clearcut instance where the bill, if not for the Nelson/Hatch/Casey amendment, would be using federal funds directly to promote elective abortions.

3. Will women lose whatever private abortion coverage they have now?

No. Anyone who has employer-based or other private insurance coverage now can keep it as before, because anyone who can afford such coverage without a federal subsidy will not be covered by the Hyde policy. Individuals who do not get insurance from their employer, but do not qualify for a subsidy, are free to buy a plan on the Exchange that includes abortions. Someone who does qualify for a subsidy can use it to purchase a plan without elective abortions, then purchase a supplemental abortion policy using only private funds if they wish to do so.

In short, the Nelson/Hatch/Casey amendment is a modest and reasonable measure that reflects the Hyde amendment and all other existing federal abortion funding policies in the context of health care reform. Under this policy, anyone who actually wants abortion coverage can buy it with their own money; the government does not use taxpayer funds for abortions; and no one who opposes abortion is forced through their health premiums to pay for other people’s abortions. Congress should be urged to approve this amendment, and retain it in any final health care reform legislation.

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